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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

GRAY

Serial No. 09/486,183

Filed: February 23, 2000

For: FIBRE REINFORCED COMPOSITES

Atty. Ref.: 540-188

Group: 1733

Examiner: J. Aftergut

* * * * *

February 26, 2003

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

PETITION TO THE COMMISSIONER UNDER 37 C.F.R. 1.181

Applicant petitions to the Commissioner to require an examination of claims 1-13 in this application as originally submitted to the U.S. Patent and Trademark Office on entry of the national phase of the pending PCT application.

An International application serial number PCT/GB00/00286 was filed February 2, 2000, claiming priority from a British application filed February 8, 1999. The PCT application designated the United States for national phase filing. Applicant entered the national phase on February 23, 2000, well before the required national phase entry deadline in order to obtain early consideration of the claims as originally filed.

Applicant received a Notification of Acceptance of Application dated September 11, 2001, and received a U.S. PTO filing receipt mailed September 21, 2001, a copy of which is attached. A review of the filing receipt copy will indicate that the

Patent Office received a total of 13 claims for consideration in this application.

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Applicant received an initial Official Action in this case mailed May 20, 2002 (Paper No. 6) in which only claims 1-11 were examined and claims 5-11 were objected to as allegedly having multiple claim dependencies. It is noted that there were no multiple dependencies in the originally submitted claims 1-13.

Applicant attempted to reach Examiner Aftergut on November 20, 2002, at the end of the response period for the first Official Action, and Mr. Aftergut was unavailable and a phone message was left. No response to the phone message was received.

Applicant filed a Response on November 20, 2002 requesting clarification of the rejection of claims 1-4 and an examination of claims 5-13 as originally submitted to the US PTO, pointing out that there are 13 claims pending in the national phase entry of the U.S. application and examination of those 13 claims is respectfully requested.

Applicant received a Final Rejection dated December 18, 2002 (paper no. 9), again rejecting claims 1-4 and failing to examine claims 5-11, with the Examiner refusing to examine claims 1-13 as originally submitted. Applicant reached the Examiner's supervisor, Michael Ball, who directed applicant's undersigned representative to Mr. Steve Markey who in turn directed applicant's representative to Rick Fisher who directed applicant's representative the group director Mary Lee. A subsequent telephone discussion with Mary Lee indicated that she would have the case pulled and contact applicant's undersigned representative.

On January 8, 2003, Bill Krynski indicated that because of applicant's reliance upon the Patent Office filing receipt listing the 13 claims which should have been examined, he indicated that applicant needed to file a Petition under Rule 181 requesting

examination of those claims and forward a copy of the filing receipt. It is noted that the Interview Summary record of the discussion with Mr. Krynski can be misinterpreted. It is stated that "prior to the written opinion in the PCT the applicant submitted an amendment to the claims changing the claims from 1-13 to 1-11." The referenced "amendment" was not an amendment filed in the US PTO for the US National phase entry, but instead was in the PCT International application.

Examiner Krynski could point to no rule or regulation or PCT or PTO requirement that indicates that the US applicant or his representative should inform the US PTO to ignore amendments made in the PCT application after the filing of the US National Phase application. Applicant relied upon the US PTO filing receipt indicating that the requested 13 claims had been received and would be examined by the PTO. Applicant promptly corrected the Examiner's examination of claims 1-11 which were never submitted for consideration in the US National Phase entry nor were ever indicated by the PTO as being present in the US case. Examination of the pending claims 1-13 is still requested.

Applicant encloses herewith a substitute declaration correcting minor informalities in the originally submitted declaration upon which the filing receipt was based (the original failed to recite the PCT priority information).

Examiner Krynski indicated that a petition for examination of claims 1-13 was required to obtain an examination and the present Petition is believed to properly make that request. An examination on the merits of claims 1-13 and the issuance of either a Notice of Allowance or a non-final first office action is requested. In as much as the

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improper examination is the PTO error, it is requested that the petition fee and the previously paid extension of time fees be refunded in their entirety.

An expedited consideration of this petition is requested in that a "final" rejection with a response date of March 18 is currently pending.

Having responded to all outstanding issues in the Final Rejection, it is submitted that claims 1-13 are pending and in condition for allowance. Notice to that effect is respectfully requested.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____

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Enclosure: Copy of Filing Receipt

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